IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 521 OF 2004

GajananHari Gharge..... ... Appellant.
Versus
Shivaji Hari Gharge and Ors. ... Respondents.

Mr. Arun Palekar for the Appellant.

Mr. P. B. Shah for the Respondents.

CORAM : A. S. OKA, J.
DATED : 21ST APRIL, 2005.

P.C.:

Heard learned Counsel appearing for the parties.

2. The appeal is by unsuccessful plaintiff. The suit is filed by the appellant / plaintiff for impeaching Sale Deed dated 28th November, 1984 executed by the original defendant No.1 in favour of defendant Nos.2 to 7 on the ground that the appellant / plaintiff has preferential right to acquire the property, subject matter of the sale deed. The preferential right claimed is under Section 22 of the Hindu Succession Act of 1956. Suit is filed by the appellant / plaintiff on 18th November, 1994.

3. The learned trial Judge decreed the suit. In an appeal preferred by the original defendants, the

decree has been set aside on various grounds and the suit filed by the appellant has been dismissed. One of the grounds on which the suit is dismissed is bar of limitation.

4. Shri Palekar, learned Counsel appearing for the appellant, did not dispute that the suit will be governed by Article 97 of the Limitation Act, 1963 (hereinafter referred to as "the said Act of 1963"). He submitted that the sale deed dated 28th November, 1984 is itself illegal and bad in law as permission of the competent authority under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the said ACt of 1948") is not obtained. He pointed out that the proceedings are pending as regards the permission under Section 43 of the said Act of 1948. He submitted that the sale deed will become enforceable only after issue of permission is decided in favour of the original defendants. He, therefore, submitted that as the sale deed has not become final, the suit is within limitation. Secondly, he placed reliance on sub-section (2) of Section 15 of the said Act of 1963. He has also placed reliance on the decision of the Allahabad High Court reported in A.I.R. 1949 Allahabad 471 **(Dhapal**

Singh vs. Gopi Chand and others).

5. Under Article 97 of the said Act of 1963, the starting point of limitation is the date on which the purchaser takes physical possession of the whole or part of the property sold under the sale sought to be impeached. Article 97 further provides that where the subject matter of the sale does not admit of physical possession of the whole or part of the property, the starting point of limitation is the date on which the instrument of sale is registered. In the facts of the case, it cannot be disputed that the purchaser has taken possession of the property subject matter of sale, on the date of execution of the sale deed. Therefore, the limitation for impeaching the sale will start running from 28th November, 1984. The suit was filed on 18th November, 1994.

6. Sub-Section (2) of Section 15 of the said Act of 1963 will have no application to the present case. This is not a case where prior consent or sanction of the Government or any other authority was required for instituting the suit. Reliance placed on the decsiion of the learned single Judge of the Allahabad High Court in the case of Dhapal Singh **(Supra)** will not

help the appellant. In the facts of the case before me, Article 97 will apply with all force and therefore, the period of limitation started running from 28th November, 1984.

7. If there is no valid permission granted for execution of the sale deed in question, the law will take its own course. However, this is an issue which is pending before the competent authority under the said Act of 1948 and irrespective of the fact whether the appellant succeeds in establishing his right of pre-emption or not, the proceeding under the provisions of the said Act of 1948 is bound to take its own course.

8. As the suit is clearly barred by limitation, no substantial question of law arises. Second Appeal is, therefore, dismissed.

9. It is made clear that there is no adjudication made as regards the dispute pending before the Competent Authority under the said Act of 1948 and the said authority will decide the proceeding independently.

10. Parties to act on the authenticated copy of this order.

Sd/-

(A. S. OKA, J.)